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IN THE

Supreme Court of the United States

October Term, 1980

BRAGER & COMPANY, INC.,

Petitioner,

against

LEUMI SECURITIES CORPORATION, BANK LEUMI LE-ISRAEL B.M. and BANK LEUMI TRUST COMPANY OF NEW YORK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Questions Presented

1. Does the formation of a subsidiary by a corporation which has the effect of substantially lessening competition or tending to create a monopoly violate §7 of the Clayton Act?

2. Must the anti-competitive effect of the formation of a subsidiary occur within a limited time after the formation in order to violate §7 of the Clayton Act?

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Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit is annexed hereto as Appendix A. The opin-

ion of the United States District Court for the Southern District of New York is annexed hereto as Appendix B.

Jurisdiction

The judgment of the Court of Appeals was entered on December 30, 1980. This Court's jurisdiction is invoked under 28 U.S.C. §1254.

Statute Involved

Section 7 of the Clayton Act (15 U.S.C. §18) is annexed hereto as Appendix C.

Statement of the Case

A. Nature of the Action.

In September 1976, petitioner Brager & Company, Inc. ("Brager") commenced this action[1] against respondents Leumi Securities Corporation ("Leumi Securities"), its parent Bank Leumi Le-Israel B.M. ("Leumi Israel") and Bank Leumi Trust Company of New York ("Leumi New York"), which is also a subsidiary of Leumi Israel.

Brager claimed, inter alia, that: (1) in violation of §1 of the Sherman Act (15 U.S.C. §1), Leumi Securities, Leumi Israel and Leumi New York conspired to unreasonably restrain trade in the secondary Israeli bond market and, in violation

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1. Jurisdiction in the District Court was predicated upon §§4 and 16 of the Clayton Act (15 U.S.C. §§15 and 26).

of §2 of the Sherman Act (15 U.S.C. §2), conspired to monopolize that market; (2) in violation of §2 of the Sherman Act, Leumi Securities attempted to monopolize, and monopolized, the secondary Israeli bond market; and (3) in violation of §7 of the Clayton Act (15 U.S.C. §18), the formation of Leumi Securities by Leumi Israel may have substantially lessened competition, restrained commerce, or tended to create a monopoly in the secondary Israeli bond market.

B. The Parties.

Brager is a securities broker dealer with offices in New York, New York which, since its formation in 1950, has purchased and sold Israeli bonds in the secondary Israeli bond market in the United States as a market maker.

Leumi Israel is the largest, oldest and one of the best known banks in Israel, with offices throughout the United States and the world. In 1976, Leumi Israel had assets of approximately $9,500,000,000.

In 1962 Leumi Israel formed Leumi Securities as a registered broker dealer. Since its incorporation, Leumi Securities has been wholly owned by Leumi Israel and/or subsidiaries of Leumi Israel and has maintained offices in New York, New York.

Leumi New York was similarly organized by Leumi Israel and, since its incorporation in 1968 as a New York banking and trust company, Leumi Israel has been its controlling shareholder owning approximately 85% of the stock of Leumi New York. In addition to Leumi Securities and Leumi New York, Leumi Israel owns or has owned numerous banks and other companies

throughout the world which together comprise the "Bank Leumi Group" or "Leumi Combine". In 1976, the Leumi Combine had 352 branches and offices throughout the world.

C. The Secondary Israeli Bond Market.

Israeli bonds are bonds issued pursuant to a series of separate offerings by the Government of Israel which bear interest at rates of from 3 1/2% to 5 1/2%[2] and which mature in 10 to 15 years.

The Development Corporation For Israel ("DCI") as underwriter for the Government of Israel sells Israeli bonds primarily to individuals pursuant to pro-

2. The vast majority of Israeli bonds issued and traded in the secondary Israeli bond market are 4% bonds. The 5 1/2% bonds may only be purchased by banks, insurance companies, labor unions, enumerated types of "funds" and credit unions, not by individuals.

spectuses which state that the offerings "...may have a special appeal to persons with an interest in Israel, rather than the general public".

An individual who has purchased an Israeli bond on the primary market from DCI may hold the bond until it has matured and then redeem the bond in the United States, or may sell the bond prior to maturity at a discount in the secondary market to another individual or another broker dealer.

In addition, pursuant to the terms of the bonds, an individual who has purchased an Israeli bond either in the primary or secondary markets may utilize the bond prior to maturity at par to pay for: (a) tourist expenses, up to $2500 a month, in connection with travelling to, in and from Israel by redeeming the bonds in Israel for Israeli currency if the bond has

been outstanding for more than 2 years, and (b) qualified investments in Israel, including stocks traded on the Tel Aviv Stock Exchange without monetary limitation, if the bond has been outstanding for more than 5 years.[3]

D. The Principal Market Makers/Competitors in the Secondary Israeli Bond Market.

From 1951 to 1967, the principal market makers of Israeli bonds in the secondary Israeli bond market were Brager and Carl Marks & Co. Inc. ("Marks"), although

3. Based on this distinction, those Israeli bonds which have been outstanding for more than 2 years but less than 5 years are called "tourist bonds", while those bonds which have been outstanding for more than 5 years but less than the maturity period of the bond are considered "investment bonds". Although all Israeli bonds which are held for more than 5 years become "investment" bonds, by definition all "investment" bonds can be used as "tourist" bonds. Israeli bonds are the only securities which the Government of Israel will redeem at par prior to maturity in connection with tourist expenses or qualified investments in Israel.

Leumi Securities did purchase and sell Israeli bonds during this period.

From 1967 to 1971, the principal Israeli bond market makers were Brager, Marks and Leumi Securities.

In 1971, Transmittal Securities Corporation ("Transmittal") joined Brager, Marks and Leumi Securities as a principal market maker in Israeli bonds. In addition, in or about 1971, Leumi Securities began to concentrate its operations in the secondary Israeli bond market.

Brager, Marks, Leumi Securities and Transmittal continued as the principal market makers until 1973. In 1973, Nathan Engel, Brager's former president, and his nephew Michael Engel (another former Brager employee), joined the New York broker dealer firm of Oscar Gruss & Son ("Gruss"). At Gruss, they continued their Israeli bond market making activ-

ities by forming an Israeli bond department which made a market in Israeli bonds.

From 1973 to 1976, and thereafter, the principal market makers in the secondary Israeli bond market were Brager, Marks, Leumi Securities, Transmittal and Gruss.

During the period from 1971 to 1976, the approximate market shares of the principal secondary Israeli bond market makers were as follows:[4]

Purchases (%)

	1971	1972	1973	1974	1975	1976
Brager	36	27	14	14	11	15
Leumi Sec	27	40	42	35	39	36
Marks	18	21	20	20	18	21
Transmittal	19	11	14	13	17	15
Gruss	--	--	9	13	10	9

4. No accurate market data with respect to the purchase and sale of Israeli bonds by the principal market makers was gathered for the period 1951 to 1971.

Sales (%)

	1971	1972	1973	1974	1975	1976
Brager	28	25	14	14	15	16
Leumi Sec	27	41	43	35	37	37
Marks	18	21	20	19	18	20
Trans-mittal	28	13	15	14	16	16
Gruss	--	--	8	13	10	10

In addition, during this period of time, Sekier (in New York), Rogenburg (in New York) and United Equities (in New York), each of which had previously made a market in Israeli bonds, ceased their market making activities.

It is therefore clear that commencing in or about 1971, when Leumi Securities concentrated its market making activities in the secondary Israeli bond market: (a) Leumi Securities acquired more than 40% of the secondary Israeli bond market by the end of 1973, (b) Brager lost more than one-half of its share in the secondary Israeli bond market in

those same years, (c) other than Gruss which was essentially an extension of Brager and, therefore, not a true de novo entrant, no competitor became a principal market maker in the secondary Israeli bond market, (d) the market shares of the other market makers generally remained relatively the same, and (e) at least 3 market makers left the market.

The means by which Leumi Securities acquired a 40% share of the highly concentrated secondary Israeli bond market within less than 3 years at the expense of Brager's market share, and thereby the ability to control prices in, exclude compeition from and otherwise dominate, concentrate, increase barriers to entry into and monopolize the market, was a function of, inter alia, the "deep pocket" benefits Leumi Securities derived

from being a subsidiary of Leumi Israel and a member of the Leumi Combine.

These "deep pocket" benefits included, inter alia, substantial capitalization and subsidization of Leumi Securities by Leumi Israel, major financing of Leumi Securities' Israeli bond trading activity by Leumi Israel and Leumi New York, and the "channelling"[5] of Israeli bonds and Israeli bond customers by Leumi Israel, Leumi New York and other members of the Leumi Combine to Leumi Securities.[6]

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5. Leumi Israel wrote its subsidiaries that:

> "We draw your attention to the fact that our subsidiary, Leumi Securities Corporation in New York, makes and maintains an active market in State of Israel bonds, asking you to channel transactions in these bonds, whenever possible, through them."

6. From 1972 to 1975, members of the Leumi Combine purchased and sold $20,000,000 of Israeli bonds from and to Leumi Securities which business was, in turn, foreclosed from Brager.

Reasons for Granting the Writ

The relevant portions of §7 provide:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock... of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.
>
> * * *
>
> Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

Consequently, the express terms of §7 of the Clayton Act clearly prohibit the formation of a corporation by another corporation which results in a substantial lessening of competition, or which tends to create a monopoly, and do not require that the adverse effect on competition of the formation occur within a specified period of time after the formation.

Nevertheless, in affirming the dismissal of Brager's §7 claim, the Court of Appeals held that the formation by Leumi Israel of a subsidiary (Leumi Securities) was not within the proscriptions of §7. In addition, the Court of Appeals held that the causal connection between the formation of Leumi Securities in 1967 and the anti-competitive effects of the formation which occurred in the "early

1970s" was "too tenuous" to support §7 relief.

These holdings not only disregarded the literal terms of §7 but, more importantly, are in direct conflict with the constructions of §7 by this Court.

For example, in United States v. E.I. du Pont de Nemours & Co., 353 U.S. 586, 592 (1957), this Court held that §7 applies to:

> "...any acquisition by one corporation of all or any part of the stock of another corporation, competitor or not... whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce."

As this Court held in United States v. Penn-Olin Chemical Co., 378 U.S. 158, 168

(1964), the proscriptions of §7 have specifically not been restricted to acquisitions of the stock of an existing corporation and encompass the formation of a new corporation.

> "The test of the section [7] is the effect of the acquisition. Certainly the formation of a joint venture and purchase by the organizers of its stock would substantially lessen competition - indeed foreclose it - as between them, both being engaged in commerce. This would be true whether they were in actual or potential competition with each other and even though the new corporation was formed to create a wholly new enterprise." (emphasis supplied).

Finally, this Court has held that §7 will be violated if competition is lessened or a monopoly is tended to be created at any time after a stock acquisition occurs. United States v. General Dynamics Corp., 415 U.S. 486 (1974).

Indeed, in United States v. E.I. du Pont de Nemours & Co., supra, an acquisition was held to violate §7 when, 30 years later, the effects of the acquisition were found to have restrained commerce. As set forth in a leading antitrust treatise commenting on Dupont:

> "...a merger which was unchallenged and apparently lawful when made can later be held unlawful on the basis of post-acquisition evidence bearing either on the purpose or effect of the merger. There is no applicable statute of limitations; every merger leaves a time bomb ticking in the board room." L.A. Sullivan, Handbook of the Law of Antitrust, §204(f), at 627 (1977).

In summary, the Court of Appeals clearly erred in affirming the directed verdict of the District Court which dismissed Brager's §7 claim. The formation of Leumi Securities by Leumi Israel is within the purview of §7 and the resulting

anti-competitive effects of the formation[7] which occurred, at most, 10 years after the formation are proscribed by §7.

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7. As a result of the financial assistance and Israeli bond business given to Leumi Securities by Leumi Israel, Leumi New York and other subsidiaries of Leumi Israel, during the period from 1962 to 1973 Leumi Securities acquired a 42% share in the secondary Israeli bond market, a 55% increase from 1971. Moreover, during this same period of time, at least 3 market makers left the secondary Israeli bond market, no de novo market makers entered the market and Brager's share in the market decreased. Consequently, the evidence more than established a possibility that competition would be lessened or a monopoly would tend to be created in the market. See United States v. Philadelphia National Bank, 374 U.S. 321 (1963) (where a 30% market share and increased market concentration were held to violate §7); United States v. Pabst Brewing Co., 384 U.S. 546, 552 (1966) ("a trend toward concentration in an industry, whatever its causes, is a highly relevant factor in determining how substantial the anticompetitive effect of a merger may be"); and F.T.C. v. Proctor & Gamble Co., 386 U.S. 568 (1967).

Conclusion

The decision by the Court of Appeals directly conflicts with the literal provisions and the interpretations by this Court of §7 of the Clayton Act. More significantly, however, the construction of §7 by the Court of Appeals has effectively amended §7 by eliminating its express prohibition against the formation of a subsidiary where the effect of such formation at any time in the future is to substantially lessen competition or tend to create a monopoly.

To preserve the integrity of §7, it is respectfully requested that a writ of certiorari be issued to the United States

Court of Appeals for the Second Circuit in this matter.

Dated: New York, New York
March 27, 1981

Respectfully submitted,

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APPENDIX

Appendix A

Opinion of the Second Circuit
Dated December 30, 1980,
Affirming the Dismissal by the District
Court of the §7 Clayton Act Claim

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 30th day of December , one thousand nine hundred and eighty.

P r e s e n t: HONORABLE JAMES L. OAKES,
HONORABLE THOMAS J. MESKILL,
Circuit Judges,
HONORABLE HENRY F. WERKER,
District Judge.* [Honorable
Henry F. Werker of the
United States District

Court for the Southern
District of New York,
sitting by designation.]

[Caption Omitted]

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

Brager & Company (Brager) appeals a judgment of the United States District Court for the Southern District of New York (Weinfeld, J.) entered on a jury verdict finding that defendants had not violated §§1 and 2 of the Sherman Act, 15 U.S.C. §§1, 2 (1976), and upon a directed verdict that defendants had not violated

§7 of the Clayton Act, 15 U.S.C. §18 (1976).

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

Brager challenges the propriety of the directed verdict, certain evidentiary rulings, and the charge. We find these contentions to be without merit.

(a) The Directed Verdict

The court correctly granted a directed verdict on the §7 claim. In granting the motion, Judge Weinfeld stated, "The Court upon its own research has discovered no instance in which a subsidiary formation by a single parent was condemned under this section. . . ." (A.2605). We agree. The cases relied

upon by Brager, including United States v. Penn-Olin Chemical Co., 378 U.S. 158, 168 (1964), did not involve formation of a subsidiary by a single parent to enter a market which the parent could have entered. In Penn-Olin, two separately owned and controlled corporations that were each potential entrants into the market combined to form a new corporation which did enter that market. The Court held the action, which was in the nature of a joint venture, was violative of §7. Here, there is only one parent which was engaged in banking and securities trading in Israel; its creation of a wholly-owned subsidiary to conduct different operations in a different geographic market does not fall within Penn-Olin. Further, the district court correctly found that the causal connection between the formation of Leumi Securities Corporation

(LSC) in 1962 and the alleged injury, which did not occur until the early 1970s, when LSC began concentrating on the secondary bond market, was too tenuous to support §7 relief.

(b) The Evidentiary Rulings

We find no prejudicial error in the evidentiary rulings. Brager argues that Judge Weinfeld should have let Abramoff testify that he did not "enjoy" the April 3 meeting and that he had written the letter to avoid being driven out of business. But Abramoff had already testified at length about the threat meeting, explaining that he had written the letter to "stay on the good side" of the bank. If the jury had believed Abramoff's version of the story, it certainly would have inferred that Abramoff did not enjoy writing the letter. If it was error to

exclude this testimony, the error was harmless.

Next, Brager argues that the court erred in excluding the statement in the Jacobowitz memorandum, contending that the statement is evidence of market power and monopolistic intent. But the relevance to market power is marginal since what Jacobowitz may have thought made no difference concerning LSC's market power. The relevance to intent was also marginal, since Jacobowitz was more of a recommender than a decisionmaker. Since he did not have authority to commit either LSC or Leumi Israel to any course of conduct, his statement could have had little bearing on what LSC or Leumi Israel intended. In excluding the evidence, the court evidently believed that the prejudicial nature of the statement far outweighed its probative value. This bal-

ancing process is entrusted to the trial judge and "should not be disturbed lightly." United States v. Schiff, 612 F.2d 73, 80 (2d Cir. 1979). See generally, United States v. Robinson, 560 F.2d 507, 515 (2d Cir. 1977) (in banc) (upholding the trial judge's discretion unless he acts arbitrarily or irrationally).

Finally, the district court correctly prohibited Brager's "securities expert" from testifying that the LSC's redemption system violated the securities laws. This testimony was properly excluded on the basis of Marx & Co., Inc. v. Diners' Club, Inc., 550 F.2d 505, 509-10 (2d Cir.), cert. denied, 434 U.S. 861 (1977) ("it is not for witnesses to instruct the jury as to applicable principles of law, but for the judge").

(c) The Charge

Brager claims that the judge should not have said that LSC had contended that the relevant market was stocks and bonds when in fact they had not so contended. This claim is frivolous. First, LSC did argue for the broader market. Second, the court made it very clear that the jury was to decide the market issue. There can be no question that this issue was presented to the jury and decided against Brager.

Next, Brager contends that there was absolutely no evidence that securities were a reasonable substitute for secondary bonds (cross-elasticity of demand). Brager argues that, because its expert testified that there was no cross-elasticity of demand, the market issue should not have gone to the jury. No cases are cited for this bold proposition. In essence, Brager sought a directed verdict on the market issue, contending that the

jury was required to accept the opinion of its expert. That is not the law of our Circuit. See County Asphalt, Inc. v. Lewis Welding & Eng. Corp., 444 F.2d 372, 377-78 (2d Cir. 1971); Purcell v. Waterman, 221 F.2d 953, 954 (2d Cir. 1955). The issue of relevant product market was presented fairly and correctly, and was left for the jury to decide.

Brager also assails the district court's restriction of trade charge. Brager claims that the court incorrectly charged that the particular restraint on commerce must be "substantial." We reject this contention for several reasons. First, the charge now challenged was not objected to. See Cohen v. Franchard Corp., 478 F.2d 115, 122 (2d Cir.), cert. denied, 414 U.S. 857 (1973). Second, even assuming that Brager was relieved of its duty to object, the challenged charge

is substantially identical to Brager's proposal, and therefore is not now assailable. See Anley v. United Pacific Ins. Co., 379 F.2d 183, 188 (9th Cir. 1967), cert. denied, 390 U.S. 950 (1968). Third, Brager's reliance on McClain v. Real Estate Bd. of New Orleans, 444 U.S. 232 (1980), is misplaced. McClain concerned only Sherman Act jurisdiction, and jurisdiction here is not questioned. The district court's charge, taken as a whole, is a good statement of the rule of reason and fairly presented the restraint of trade issue to the jury.

Finally, Brager requested the court to charge that LSC's "redemption scheme" violated the securities laws. Even assuming that this system violated the securities laws, its relevance to the alleged antitrust violations is peripheral at best. Further, all the facts under-

lying the scheme were admitted into evidence and carefully marshalled in the court's charge. In addition, Brager's summation certainly conveyed the impression of illegality. Thus, Brager's arguments concerning the scheme went to the jury; what did not go to the jury was a definitive statement that the process was illegal. But there is no reason that a legal statement by the judge that LSC's allegedly predatory acts violated the antifraud provisions of the securities statutes regarding third parties is any more probative of anticompetitive intent than is the evidence of the allegedly predatory acts themselves. To introduce even more evidence on a tangential issue would only confuse the jury and would clearly prejudice the defendants. Under these circumstances, Judge Weinfeld correctly refused to give the requested charge.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of the District Court is AFFIRMED.

/S/

James L. Oakes, U.S.C.J.

/S/

Thomas J. Meskill, U.S.C.J.

/S/

Henry F. Werker, U.S.D.J.

Appendix B

Opinion of the District Court
Rendered on December 6, 1979,
Dismissing the §7 Clayton Act
Claim Pursuant to Defendants'
Motion for a Directed Verdict
(76 Civ. 4110 (EW))

[Tr.3902] THE COURT: The court will reserve decision on the motion made by the three defendants with respect to the Section 1 and Section 2 claims under the Sherman Act.

With respect to the Section 7 Clayton Act claim, the court has previously indicated that it had substantial reservation, upon the evidence in the case, that the matter should be presented to the jury.

Brager's challenge under Section 7 of the Clayton Act to the formation by Bank Leumi Le-Israel rests upon an exception in the Act which towards the end refers to when the effect of such formation is not to substantially lessen competition.

The court upon its own research has discovered no instance in which a subsidiary formation by a single parent was condemned under this section; nor has the plaintiff directed our attention to any.

Nonetheless, even if it is conceded that some [Tr. 3903] subsidiary formations could be held to be beyond the exculpatory clause of Section 7, no evidence in this case suggests that the formation in 1962 of Leumi Securities by its parent comes within that category.

Section 7 is concerned with the effects produced by an acquisition upon the structure of a market and competition

within it. United States v. Penn-Olin Co., 387 U.S. 158, 168 (1964); Sullivan, Antitrust Section 192 (1977).

The creation of Leumi Securities involved the formation of a subsidiary by a single parent corporation which was not then or is now in competition with its subsidiary. This is fairly common occurrence in the corporate world.

Such a formation can only be regarded as affecting a de novo entry into whatever market the subsidiary undertakes to compete in.

The most salient effect on market structure of de novo entry is, of course, the addition of a new competitor to a market -- a patently pro-competitive effect. De novo entry, even by a large corporation, has never been held to be illegal. Quite to the contrary, de novo entry has been the benchmark against which the effects of acquisitions are measured.

[Tr. 3904] See, e.g., United States v. Penn-Olin Co., supra; United States v. Marine Bancorporation, Inc., 418 U.S. 602, 632-40 (1974); United States v. Falstaff Brewing Co., 410 U.S. 526 (1973).

There is nothing in the record that the formation challenged had any effect but to add Leumi Securities as a competitor to the market; incidentally, deconcentrating a market apparently dominated by plaintiff up to the time of Leumi Securities' entry in 1967.

I have already referred to the factual situation when defendant earlier made an offer of the exhibit upon the close or the resting of the plaintiff of their case.

For this reason alone, a directed verdict on this claim in favor of the de fendants is warranted.

In addition to the above, however, it may also be noted that under the facts as adduced in this case, while any effect the formation of Leumi Securities may have had was the affect of de novo entry, the link between the formation and any effect on the market whatsoever is extremely tenuous.

The subsidiary was formed in 1962. It did not enter the relevant market, as described by plaintiff, [Tr. 3905] until 1967. Thus, the effects of Leumi Securities' entry cannot be attributed to its formation but rather to its conduct and practices and the conduct of its parent after 1967 -- conduct which forms a basis of plaintiff's Sherman Act claims.

In short, there is no evidence in the case to support a connection between

the formation of the subsidiary and the conduct and effects of which plaintiff complains.

Accordingly, the defendants' motion for a directed verdict on the Clayton Act, Section 7 is granted.

Realistically, as I indicated, I believe that claim in large measure is subsumed on at least one of the other claims you have. I think the other difference would be, as Mr. Solin pointed out, if you did prevail on the claim you could ask for injunctive relief.

MR. BREINDEL: I believe we could ask for injunctive relief under the Clayton Act as well.

THE COURT: Apart from what I said, I think it lessens the burden of the jury, which has sufficient questions to consider without really complicting the matter.

Appendix C

Section 7 of the Clayton Act (15 U.S.C. §18)

§18. Acquisition by one corporation of stock of another.

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section pre-

vent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the

stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or

made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.